

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 262 of 1999

in

SPECIAL CIVIL APPLICATION No 594 of 1999

with

CIVIL APPLICATION NO. 3153 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

CJ DESAI

Versus

STATE OF GUJARAT

Appearance:

MR IS SUPEHIA for Appellant
MR UDAY BHATT, FOR Respondent No. 1
MR DN PATEL for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

Date of decision: 10/08/1999

ORAL JUDGEMENT

Admitted. Mr. Uday Bhatt appears and waives service of Notice of admission for respondent No.1 and Mr.D.N.Patel appears and waives service of Notice of admission for respondent No.2. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This appeal is filed against summary dismissal of Special Civil Application No. 594 of 1999 by the learned Single Judge on February 10, 1999.

Appellant was the original petitioner. He filed the above petition for an appropriate writ, order or direction directing the respondents to promote him to the post of Administrative Officer with effect from July 7, 1998 or latest by August 15, 1998 and to give all consequential benefits on the basis of such promotion.

It was the case of the appellant that he was serving as Head-Clerk under the Directorate of Archeology since 1993. It was his case that he was working as Assistant Accountant and was promoted on ad hoc basis as Head Clerk on September 9, 1993. He was regularly promoted to the said post on April 15, 1995. But illegally, he was reverted to the post of Assistant Accountant on July 3, 1995. Since the said action was illegal and contrary to law, he preferred Special Civil Application No. 4119 of 1996 which came to be allowed by the learned Single Judge on July 10, 1996 and the order of reversion passed against him was quashed and set aside. The next promotional post is of Administrative Officer. According to the appellant, there was only one post of Head Clerk and one post of Administrative Officer in the Directorate of Archeology. Since he was the only person available, he ought to have been promoted to the said post. It is asserted by the appellant that he had requisite experience as per Administrative Officer Recruitment Rules, 1982 and yet, he was not promoted to the said post. According to him, as he belongs to Scheduled Tribe, he ought to have been treated eligible as per Government Resolution, dated May 17, 1997 and ought to have been promoted when he was found fit for such promotion.

The learned Single Judge summarily dismissed the petition inter alia observing that statutory rules have been framed under the proviso to Article 309 of the Constitution of India known as Administrative Officer Recruitment Rules, 1982. Rule 3 provided for appointment to the post of administrative officer in the

Directorate of Archeology and the said Rule read as under:

"2. Appointment to the post of Administrative Officer , General State Service Class II in the Directorate of Archeology shall be made either:-

(a) by promotion of a person of proved merit and efficiency from amongst the persons serving in the cadre of Head Clerk in the Department of Archeology who has served for about five years on that post, or

(b) by deputation of Section Officer from Sachivalaya , or

(c) by direct selection."

Learned Single Judge observed that the appellant-petitioner had not completed five years on the post of Head Clerk and hence he could not be said to be eligible for promotion as Administrative Officer. It was also observed that in view of specific rules regarding appointment and promotion to the post of administrative officer, general rules of Gujarat Civil Services Classification and Recruitment (General) Rules, 1967 as amended by Gujarat Civil Services Classification and Recruitment (General) (Third Amendment) Rules, 1985 and in particular, proviso to Rule 11A (2) would not apply. According to the learned Single Judge, the Government Resolution had also no application. The said order is challenged before us.

Several contentions were raised by Mr. Supehia for the appellant. He contended that in 1993, the appellant was promoted to the post of Head Clerk. Now, looking to the order, it is not clear as to whether in fact, the appellant was promoted to the post of Head Clerk. The order states that the appellant who was working as Assistant Accountant had been promoted on ad hoc basis and/or appointed as in-charge Head Clerk. Looking to the subsequent sentence, however, it appears that he was placed as Head Clerk in-charge. In these circumstances, prima facie, it cannot be said that by treating the appellant as in-charge Head Clerk, any illegality can be said to have been committed.

We are, however, impressed by the argument of Mr.

Supehia that when the appellant was regularly appointed to the post of Head Clerk on April 15, 1995 and when reversion of the appellant was held to be bad by this Court and the order was quashed and set aside, it was not open thereafter to the respondent-authorities to contend that the period during which the appellant could not work would not be taken into account. In our opinion, when the order was quashed and set aside by this Court, the appellant could not be deprived of the benefit from the judgment. Mr. Patel, however, submitted that even in that case, the appellant had not completed necessary experience as laid down in Rules. Now, it is undisputed fact that the appellant was found fit by the Government for promotion to the post of Administrative Officer as is reflected in Annexure 'B' to the petition, dated September 3, 1998. It was stated in Annexure 'B' that on July 7, 1998, the case of the appellant was considered and he was found fit. But presumably on the ground that the appellant had no requisite experience, Gujarat Public Service Commission, respondent No.2, returned the papers to the State Government stating that the appellant could not be promoted to the post of Administrative Officer. It, however, appears that thereafter, again, the Commission considered the case of the appellant but meanwhile, as pointed out to us at the time of hearing of LPA, the appellant retired on reaching the age of superannuation with effect from March 31, 1999. The State Government, therefore, intimated the Commission not to consider the case of the appellant.

Obviously, this could not have been done. Even if the appellant had retired on reaching the age of superannuation, the claim of the appellant was required to be decided in accordance with law. Since, case of the appellant was not considered on the basis of communication of the Government to the Public Service Commission, vide its letter dated April 19, 1999, the action deserves to be quashed by directing the respondents to consider the case of the appellant in accordance with law.

Only on that ground, and without expressing any opinion on the merits of the matter, LPA deserves to be allowed and is accordingly allowed.

So far as respondents are concerned, direction is issued to consider the case of the appellant as to whether he could claim benefits as put forward by him. State, respondent No.1 and Public Service Commission, respondent No. 2, will now consider the claim of the appellant afresh, in light of the relevant Rules and/or guidelines/

Circulars/ Resolutions and keeping in mind the fact that his case was considered by the Government and he was found fit. We may, however, state that as we are disposing LPA only on this ground, we may not be understood to have stated anything on merits. We, therefore, direct the respondents to consider the case of the appellant on its own merits without in any way being influenced by the observations made by the learned Single Judge or by us. Since the appellant has already retired from service, both the respondents are directed to finalise the case of the appellant by taking appropriate decision in accordance with law, as expeditiously as possible, preferably within three months from the receipt of writ of this Court. Appeal is accordingly allowed to the above extent. No order as to costs. There will be no order on civil application.

parekh